IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J. APPEAL NO 55 OF 2003
IN
COMPANY PETITION NO.270 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OMPRASAD INFRASTRUCTURES LTD.

Versus

AMBICA FABRICATOR

Appearance:
1. O.J.APPEAL No. 55 of 2003 with CA No.197 of 2003
MR NEHAL R JOSHI for Appellant No.
MR IM BENGALI for Appellant No.
MR BC DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 28/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

This Appeal was listed on our running Final Hearing Board dated 14.6.2004 at Sr.No.6. The endorsement shows that it is listed for the 5th time. As per present Roster final hearing matters are taken up only on Wednesday and Thursday. When this matter was called out no one was present. From the Order sheet of this matter we find that initially this matter was placed before the Division Bench consisting of N.D.Nandi,J. (as he then was) and D.P.Buch, J. on 12.12.2003 and after hearing the learned Counsel for the parties the matter was admitted and it was ordered to be listed for final hearing on 17.12.2003. Thereafter, the matter was listed on 17.12.2003 before the same Division Bench and at the joint request of learned Counsel for the parties the matter was adjourned to 15.1.2004 as they wanted to make joint request before the learned Company Judge in the main Company Petition No.270 of 2002 for further deferment of publication of public notice.

2. We find from the order of the learned Company Judge, passed on 4.11.2003 in Company Petition No.270 of 2002, that even after admission of petition the learned Company Judge himself, considering the scope of settlement between the parties, deferred publication of advertisement as to admission and final hearing till 24.11.2003. In that situation, we are of the considered opinion that there was no need for the present Appellant to file Appeal and persue the remedy of further deferment of publication of advertisement. Instead the Appeal was filed, which was admitted on 12.12.2003 by the Division Bench of this Court and fixed it for final hearing on 17.12.2003. As stated earlier, on 17.12.2003, on the joint request of learned Counsel for the parties the matter was adjourned for enabling the parties to approach the learned Single Judge for further deferment of publication of advertisement.

3. In the case of National Conduits (P) Ltd. v/s. S.S.Arora, reported in 37 COMPANY CASES 786 (SC), it was observed that if the petition was admitted still it was open to the company to move the Court for deferment or in advertising public notice. It seems that keeping in mind the ratio laid down by the Hon'ble Supreme Court the Division Bench of this Court by its order dated 17.12.2003 adjourned the matter on the joint request of learned Counsel for the parties for approaching the learned Company Judge for further deferment of publication of notice.

4. When the learned Company Judge, even after admission of the Company Petition, considering the scope of settlement between the parties, on his own deferred publication of the public notice for admission and final hearing then, in our considered opi
at pre-mature stage.

5. In view of the above, this Appeal is dismissed.

(B.J.Shethna, J.)
Date : July 28, 2004
(M. C. Patel, J.)
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